

## § 76.1004

standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint. In addition to the requirements of § 76.7, the complainant shall have the burden of proof to demonstrate the following in its petition:

(i) The complainant is likely to prevail on the merits of its complaint;

(ii) The complainant will suffer irreparable harm absent a stay;

(iii) Grant of a stay will not substantially harm other interested parties; and

(iv) The public interest favors grant of a stay.

(2) The defendant cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a petition for temporary standstill is served shall answer within ten (10) days of service of the petition, unless otherwise directed by the Commission.

(3) If the Commission grants the temporary standstill, the Commission's decision acting on the complaint will provide for remedies that make the terms of the new agreement between the parties retroactive to the expiration date of the previous programming contract.

(m) *Deadline for Media Bureau action on complaints alleging a denial of programming.* For complaints alleging a denial of programming, the Chief, Media Bureau shall release a decision resolving the complaint within six (6) months from the date the complaint is filed.

[64 FR 6572, Feb. 10, 1999, as amended at 67 FR 13235, Mar. 21, 2002; 72 FR 56661, Oct. 4, 2007; 75 FR 9724, Mar. 3, 2010; 77 FR 66048, Oct. 31, 2012]

### **§ 76.1004 Applicability of program access rules to common carriers and affiliates.**

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable inter-

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est. For the purposes of this section, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company) or a terrestrial cable programming vendor (or its parent company).

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers as follows: No common carrier or its affiliate that provides video programming directly to subscribers shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest, or any satellite broadcasting vendor in which a common carrier or its affiliate has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

[61 FR 18980, Apr. 30, 1996, as amended at 61 FR 28708, June 5, 1996; 75 FR 9724, Mar. 3, 2010; 77 FR 66048, Oct. 31, 2012]

### **§§ 76.1005–76.1010 [Reserved]**

## **Subpart P—Competitive Availability of Navigation Devices**

SOURCE: 63 FR 38094, July 15, 1998, unless otherwise noted.

### **§ 76.1200 Definitions.**

As used in this subpart:

(a) *Multichannel video programming system.* A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, BRS/EBS systems, direct broadcast satellite systems, other systems

for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) *Multichannel video programming distributor.* A person such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(c) *Navigation devices.* Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(d) *Affiliate.* A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying § 76.501.

(e) *Conditional access.* The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

[63 FR 38094, July 15, 1998, as amended at 69 FR 72046, Dec. 10, 2004]

**§ 76.1201 Rights of subscribers to use or attach navigation devices.**

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

**§ 76.1202 Availability of navigation devices.**

No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated

with such owner or operator, subject to § 76.1209.

**§ 76.1203 Incidence of harm.**

A multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

**§ 76.1204 Availability of equipment performing conditional access or security functions.**

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

(2) The foregoing requirement shall not apply:

(i) With respect to unidirectional navigation devices without recording functionality; or

(ii) To a multichannel video programming distributor that supports the active use by subscribers of navigation devices that:

(A) Operate throughout the continental United States, and

(B) Are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.